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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040401

Application Number: 09/510,782
Filing Date: February 23, 2000
Appellant(s): KRYSIAK ET AL.

Philip M. Weiss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/26/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9 are rejected under 35 U.S.C. 130 (a). This rejection is set forth in prior Office Action, Paper No. 6/27/03.

(11) Response to Argument

Appellants' argued that Spittle does not teach a mixing and tumbling process but, instead, teaches a pressure compression extrusion process.

Upon repeated readings of col. 3, lines 6-30 of Spittle, the Examiner cannot draw to a conclusion that Spittle teaches making the mulch by a pressure process. Although the declarations repeatedly state that the Spittle patent teaches a pressure agglomeration technique and not an agitation process as claimed by applicants, the Spittle patent does not state such pressure agglomeration technique. Instead, Spittle teaches to use any known granulation equipment (col. 3, line 29) and does not specifically state only a pressure agglomeration method or equipment. The Examiner realizes that Mr. Hoffman and Mr. Engelleitner are experts in the field of mulching and respects their opinions; however, in the declarations, both Hoffman and Engelleitner's statements regarding Spittle's being a pressure process were mere allegations without any proof or evidence. Merely stating that Spittle teaches pressure process instead of mixing and tumbling without evidence is not good enough to overcome Spittle, especially when Spittle mentioned no such pressure process, and clearly Spittle states "using known granulation equipment to create the mulch. In addition, both Hoffman and Engelleitner acknowledge that mixing and tumbling in a pin mixer is a known process and/or device to make granulated mulch; therefore, since Spittle states that one could

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use any known granulation equipment, it would have been obvious to one skilled in the art of mulch making to select various types of granulation equipment such as the pin mixer to make the granulated mulch of Spittle. Furthermore, in Appellants' specification page 2, Appellants state various types of granulation equipments such as using a pan pelletizer, paddle mixer, drum granulator or other types of mixer; thus, indicating the same as Spittle, i.e. to use any known granulation equipment to make the mulch.

Appellants argued that the pressure process used in Spittle produces a cylindrical mulch while the agglomeration process used by Appellants produces a spherical mulch.

Again, this is a mere allegation without proof or evidence that Spittle's mulch is actually cylindrical in shape and not spherical. Clearly throughout Spittle, there is no mention of the shape being cylindrical. Instead, there were more mentioning of spherical in Spittle such as the mulch being made into pellets. Definition of pellet is "a small, solid or densely packed **ball** or mass" (from the Microsoft Basic Desktop Dictionary). A ball is believed to be spherical in shape. In addition, Spittle mentioned flakes being "1/16" to 3/8" in the longest dimension and about 1/8" thick", which, again, does not necessarily indicate cylindrical in shape.

Appellants argued that Spittle process is a multi-step process while Appellants' is a single step tumble process.

Appellants claim language never stated a single step tumble process. As a matter of fact, claim 1 clearly states four steps in order to derive the present invention mulch so it is unclear why Appellants believe that their invention is a single tumble

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process. In addition, throughout the specification, the steps involved in making the present invention mulch do not appeared to be a single step tumble process; instead, many steps are needed to produce the final product.

Appellants argued that Spittle does not teach a binding agent.

Spittle teaches paper fibers mixed with other ingredients to form the mixture into pellets and Morgan teaches a mulch comprising paper fibers, other granules, and a binding agent to bind the fibers and granules together. Therefore, it would have been obvious to one of ordinary skill in the art to combine Spittle with Morgan for a teaching of a binding agent to bind or hold the ingredients in the mulch together.

Appellants argued that Spittle as modified by Morgan does not disclose performing size reduction operation on the paper fibers prior to adding the fibers to a granulation equipment.

Col. 3, lines 6-15 of Spittle clearly teaches performing a size reduction operation on the paper fibers (cut into pieces about $1/4$ to $3/4$ inch) prior to adding the fibers to the granulation equipment.

Appellants argued that Spittle as modified by Morgan is silent about using sewer sludge in place of paper fibers.

Decker is relied upon for a teaching of using sewer sludge to make mulch. Decker teaches in col. 2, lines 10-13, that sewage sludge is proven to be a very effective mulch media because it is plentiful, inexpensive, easy to handle and rich in nutrients. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute sewage sludge as taught by Decker for the paper

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fibers of Spittle as modified by Morgan in order to reduce cost and ease of handling and still produce an effective mulch.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

stn

April 1, 2004

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